

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 10, 2017

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

08OD-110A

OAHU

*Amend Prior Board Action of October 14, 2016, Agenda Item D-12, Issuance of Direct Lease to Na Pua Makani Power Partners, LLC, Lessee, for Wind Power Project Purposes; Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1) 5-6-008:006*

The purpose of the amendment is to replace the form of lease approved in the prior Board action with a revised lease form. The revised lease form contains amended provisions relating to: the definition of “measurement tower (MET)”; reservation of a right-of-entry in a portion of the premises in favor of the Division of Forestry and Wildlife (DOFAW); utility services, and subleases or easements that may be required by Hawaiian Electric Company, Inc.; improvement bond; attachment of a portion of the Phase I Environmental Site Assessment for the property as a lease exhibit; and deadlines for lessee to secure a Conditional Use Permit from the City and County of Honolulu, and approval of a Habitat Conservation Plan and Incidental Take License from DOFAW. The revised lease makes other non-substantive, conforming amendments.

BACKGROUND:

At its meeting of October 14, 2016, under agenda item D-12, the Board of Land and Natural Resources approved the issuance of a direct lease to Na Pua Makani Power Partners, LLC (NPM or Lessee) for a wind energy project at Kahuku, Oahu. The approved lease form was attached to the prior Board action. A copy of the body of the approved Board action, less its exhibits, is attached as Exhibit 1.

After the Board approval, staff submitted a document request to the Department of the Attorney General (AGs) to prepare the lease. Upon careful review of the approved Board action and lease form, the AGs recommended a number of edits to the lease. As a result, the lease to NPM has not been finalized for execution.

Staff has incorporated the AGs’ recommended edits into a revised lease form attached hereto as Exhibit 2, which is redlined against the version of the lease the Board approved

at its meeting of October 14, 2016. Below staff reviews the specific amendments that are being recommended to the lease form.

REMARKS:

Although many of the recommended lease edits are non-substantive, a few of the edits do make changes to rights, duties and deadlines under the lease. Staff discusses the proposed edits in the order in which they appear in the lease:

Table of Contents. At the October 14, 2016 meeting, the Board approved the lease with Exhibits "E" and "F" attached thereto. The table of contents at page iii will be revised to specifically reference these exhibits.

Preamble. On page 1 of the lease, the phrase "Wind Project Energy Site" is included as an identifier of the lease premises to correspond to the title of the official CSF map attached to lease form as Exhibit "A".

Reservations to State. On page 4 of the lease, the acronym MET is defined to mean "measurement tower." Additionally, on page 6 of the lease, a new reservation to the State has been included to refer to the Right-of-Entry No. 4220 that the Board previously approved to the Division of Forestry and Wildlife for the mitigation and recovery of *Abutilon menziesii* over a 5-acre area of the lease premises.

Section 3. Utility services. The lease form was revised at page 7 to delete language by which the Board committed in advance to consenting to easements or leases that Hawaiian Electric Company, Inc. (HECO) may require on State lands for the project. In its place, the following language was inserted:

If a sublease is required for any HECO facility or equipment on the premises, then Lessee shall comply with Section 15 herein, "Subletting".  
If an easement or similar disposition is required for any HECO facility or equipment on the premises, then Lessee shall direct HECO to apply to Lessor for such easement or other disposition in accordance with Chapter 171, Hawaii Revised Statutes, and subject to Lessee's written concurrence thereto.

Section 9. Improvements. The word "wind" was inserted before turbine on page 9 for the sake of clarity.

Section 26. Acceptance of rent not a waiver. The adverb "expressly" was inserted for clarity in the following provision:

The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or

condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option, unless provided expressly otherwise in this lease or in writing by Lessor.

Section 37. Bond, improvement. The verb “release” was included in the following clause for clarity and for the State’s protection: “Lessee agrees that it shall release, indemnify, defend, and hold the Lessor harmless . . . .”

Section 38. Notices. The blank space for the lender’s name is being deleted since there will be no lender identified at lease commencement.

Section 54. Phase I environmental site assessment. Language is being added to refer specifically to the Environmental Site Assessment (Phase I ESA) dated May 20, 2014 that was paid for and conducted by NPM prior to the term of the lease and accepted by the State prior to the commencement of the lease, and to note that a copy of title page, table of contents and executive summary of the Phase I ESA will be attached to the lease as Exhibit “D” (the complete Phase I ESA consists of 328 pages which are incorporated in the lease by reference).

Section 66. Special Conditions. The deadline for NPM to obtain a conditional use permit for the project from the City and County of Honolulu, if required, is being changed to March 31, 2018, which is consistent with what the Board approved at its meeting of October 14, 2016.<sup>1</sup> The deadline for NPM to obtain Board approval of a Habitat Conservation Plan (HCP) and an Incidental Take License (ITL) from the Division of Forestry and Wildlife for the project is being extended to a date no later than one year after the date of the lease, or March 31, 2018, whichever occurs first. The prior deadline had been no later than one year after the date of the lease, or March 31, 2017, whichever occurs first. NPM is unable to meet the prior deadline due to the filing of contested case petitions on NPM’s request for Board approval of the HCP and ITL, and has therefore requested an extension of the deadline. To account for possible additional delays due to the contested case hearing or appeals thereof or if any Board decision is subject to further challenge or court action, NPM has requested language be included in the lease to allow 90 days from the later of: (i) the conclusion of the contested case hearing or appeals thereof; or (ii) the deadline by which an appeal must be filed regarding the Board’s decision in the contested case for NPM to secure the HCP and ITL. Staff has no objection to NPM’s requests. Finally, language in the prior lease form regarding the timing for the State to present the HCP to the Board is being deleted since this item has been completed.

#### RECOMMENDATION:

That the Board:

1. Amend its prior Board action of October 14, 2016, under agenda item D-12, by

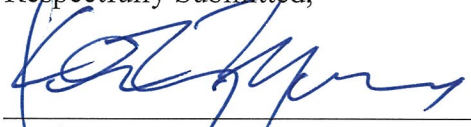
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<sup>1</sup> The prior lease form had an inconsistent date of October 31, 2018.

deleting the prior lease form attached thereto as Exhibit 2 and replacing it with the new lease form attached hereto as Exhibit 2.

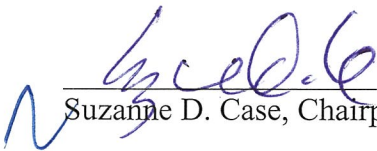
2. Except as amended hereby, confirm that the terms and conditions listed in its October 14, 2016 approval shall remain the same.

Respectfully Submitted,



Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 14, 2016

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

08OD-110A

OAHU

Issuance of Direct Lease to Na Pua Makani Power Partners, LLC, Lessee, for  
Wind Power Project Purposes; Kahuku-Malaekahana, Koolauloa, Oahu, TMK:  
(1) 5-6-008:006

APPLICANT:

Na Pua Makani Power Partners, LLC (NPM), a Delaware limited liability company.

LEGAL REFERENCE:

Sections 171-6, -35, -95, and -95.3, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Government land situated at Kahuku-Malaekahana, Koolauloa, Oahu, identified by Tax  
Map Key: (1) 5-6-008:006, as shown on the attached maps labeled Exhibit 1.

AREA:

Total Parcel Area: 231.927 acres, more or less

ZONING:

State Land Use District: Agricultural  
City and County of Honolulu LUO: Agricultural 1 and 2

TRUST LAND STATUS:

Non-ceded. Government land acquired since statehood from the Estate of James  
Campbell, Deceased.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
October 14, 2016 uo.

D-12

**EXHIBIT 1**

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered, with the exception of a right-of-entry permit dated March 3, 2016 (ROE #4220) issued to the Division of Forestry and Wildlife for a five-acre portion of the premises to be used for mitigation and recovery of *Abutilon menziesii*. The Board approved the issuance of the permit at its meeting of February 26, 2016, under agenda item D-14, as amended.

LEASE TERM:

Forty (40) years with the option for NPM to terminate early under certain circumstances. See remarks section below.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

LEASE CHARACTER OF USE:

The lease character of use is a wind power project site. The details are set forth at Section 13 of the proposed lease form attached hereto as Exhibit 2.<sup>1</sup>

ANNUAL RENT:

The minimum annual rent for the first 20 years of the lease term has been determined by an independent appraiser contracted for by the State and approved by the Chairperson, and is as follows:

Years 2-10: \$120,000 per year  
Years 11-20: \$150,000 per year

Additionally, NPM will be required to pay percentage rent of 2.5% of gross revenue as defined in the lease, to the extent such amount exceeds the minimum annual rent in any one year. Pursuant to HRS Section 171-6(7), NPM has requested a waiver of rent for the first year of the lease as its proposed use of the land will require the placement of substantial improvements on the property in order for NPM to utilize the site for its wind energy project. The proposed lease grants the one-year rent waiver.

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<sup>1</sup> Exhibits A and A-1 to the proposed lease form, which are the map and description of the premises respectively, are being prepared by DAGS Survey Division and will be attached to the final lease, if approved. Exhibit D of the proposed lease form, which is the environmental site assessment for the property, is omitted as an attachment due to its length, but will be included in the final lease in whole or in part, if the lease is approved.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

Rent for the first 20 years of the lease has been determined by independent appraisal. Rent will be reopened at the 21<sup>st</sup> year of the lease and at "Repowering," defined in the proposed lease as follows:

"Repowering" means: (i) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models, or (ii) a significant modification to the portion of the Wind Project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises. The following shall not constitute Repowering: (1) reuse of the Project Improvements, including, without limitation, roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of any Wind Project substation for any reason, (3) replacement of wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and Project Improvements on the premises as a result of casualty or loss.

PERFORMANCE BOND:

\$1,500,000.

PROPERTY CHARACTERISTICS:

Utilities – There is no existing electrical service to the property, although distribution lines are located in the vicinity. There are no public water systems or public water wells on the property. There is no wastewater system servicing the property.

Slope – 2-40%

Elevation – From 72 feet to 614 feet above mean sea level.

Rainfall – Average annual rainfall is between 45-60 inches.

SCS Soil Series – Predominantly Paumaulu-Badland complex, with smaller areas of Paumaulu silty clay, Haleiwa silty clay, Kaena clay, and Lahaina silty clay.

Land Study Bureau – Category E (least productive soils).

Legal access to property – Staff has verified that there is legal access off of Kamehameha Highway via local roads in the area to lands under the jurisdiction of the Department of Agriculture (DOA) under Executive Order No. 3867. The DOA lands are adjacent to the subject property. NPM reports that DOA is agreeable to granting NPM an easement over roads on the DOA lands to reach the subject property.

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – Staff has verified that there are no encumbrances on the property with the exception of ROE #4220 to DOFAW for a five-acre portion of the premises to be used for mitigation and recovery of *Abutilon menziesii*.

Environmental – A Phase I Environmental Site Assessment dated May 20, 2014 found that the subject parcel is “vacant wooded and scrub-vegetated land, with no evidence of past or current agricultural use.” No recognized environmental conditions were identified with respect to the property.

#### CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement (FEIS) for the wind project was accepted by the Board of Land and Natural Resources at its meeting of July 22, 2016, Item D-11, and published in the Office of Environmental Quality Control's The Environmental Notice on July 23, 2016. The Board's acceptance letter was published in The Environmental Notice on August 8, 2016.

#### DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

#### APPLICANT REQUIREMENTS:

1. Pay for the costs of public notice pursuant to section 171-16, if applicable.

#### BACKGROUND:

The State is the fee simple owner of certain real property containing an area of approximately 231.927 acres, described as Lot 1168, Map 137, Land Court Application 1095, Kahuku-Malaekahana, Koolauloa, Oahu.

At its August 8, 2008 meeting, under agenda item D-10, the Board of Land and Natural Resources (i) approved the withdrawal of the premises from Governor's Executive Order 3867, (ii) approved in principle the issuance of a direct lease to West Wind Works, LLC (West Wind) covering the premises, (iii) authorized the Department of Land and Natural Resources to negotiate exclusively with West Wind for a direct lease of the premises, and (iv) authorized the issuance of a right-of-entry permit to West Wind to enter upon the premises to conduct due diligence, subject to certain terms and conditions.

At its July 13, 2012 meeting, under agenda item D-14, the Board approved an amendment to the August 8, 2008 Board action by consenting to the assignment and assumption from West Wind to Na Pua Makani Power Partners, LLC (NPM) of the direct lease approved in principle, and extending the right-of-entry permit to expire on the commencement date of the lease. At its October 12, 2012 meeting, under agenda item D-

7, the Board approved an amendment to the July 13, 2012 Board action by deleting the assignment of lease and replacing West Wind with NPM as the applicant.

At its meeting of December 13, 2013, Item D-31, the Board amended its prior action of August 8, 2008, Item D-10, to authorize the Chairperson to negotiate and enter into a development agreement with NPM for the wind project as an interim agreement prior to the Board entering into a lease agreement with NPM. Subsequently, a Development Agreement between the Board and NPM was executed on December 26, 2013.

At its meeting of February 26, 2016, Item D-14, as amended, the Board approved an amendment to the Development Agreement making the following changes: (i) authorizing five acres of the proposed lease premises to be withdrawn and set aside to the Division of Forestry and Wildlife for protection of the endangered plant species, *Abutilon menziesii*; (ii) allowing the Development Agreement to be extended up to March 31, 2018;<sup>2</sup> (iii) allowing NPM to secure a Habitat Conservation Plan and Incidental Take License after the issuance of the lease; (iv) allowing NPM to obtain a Conditional Use Permit from the City and County of Honolulu and provide evidence of financial ability to construct the project after the issuance of the lease but no later than March 31, 2018. An Amendment of Development Agreement instrument was prepared and signed by the parties on March 30, 2016. NPM exercised a one-year extension of the amended Development Agreement by notice dated March 31, 2016.

At its meeting of July 22, 2016, Item D-11, the Board accepted the FEIS for the wind project. The FEIS was published in The Environmental Notice on July 23, 2016. The Board's acceptance was published in The Environmental Notice on August 8, 2016.

Pursuant to Section 171-95.3, HRS, public hearings regarding the proposed renewable energy project were held in the Boardroom at the Kalanimoku Building on Wednesday, August 24 at 6:00-7:30 PM and Saturday, August 27, 2016 at 1:00-2:30 PM. Notice of the hearings was published in the Honolulu Star-Advertiser on Tuesday, August 9, 2016 as required by the statute, and was also posted on the Land Division website. The Department procured court reporters to transcribe the testimony at the hearings, and the full transcripts are attached hereto as Exhibit 3. Additionally, notice of today's Board meeting on the final approval of the issuance of a lease to NPM was published in the Honolulu Star-Advertiser on September 21, 2016 as required by Section 171-95.3, HRS, and posted on the Land Division website.

REMARKS:

The proposed wind energy project is located partly on the subject land and partly on private land in the area. The applicant is requesting a direct lease pursuant to HRS Sections 171-95 and 171-95.3 for the state-owned parcel, TMK: (1) 5-6-008:006, with an area of approximately 231.927 acres. The parcel was previously set aside to the Hawaii Department of Agriculture (DOA) via Governor's Executive Order (EO) 3867 for Kahuku Agricultural Park purposes. In order to pursue the lease for the project, the

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<sup>2</sup> The Development Agreement was previously set to expire on March 31, 2016.

parcel was withdrawn from EO 3867 by EO 4482, dated March 23, 2015. The state owned parcel is currently vacant. The applicant is also seeking to obtain a lease over adjacent private lands owned by Malaekahana Hui West, LLC, as well as access easements over state lands set aside to DOA. The total leased area plus the State-owned access is approximately 707 acres. Within the leased area, all proposed project activities would occur within a smaller approximately 464-acre project area.

NPM and the Department have negotiated a form of lease to be issued to NPM for the wind project, subject to Board approval. See Exhibit 2 attached. Some of the key terms and conditions are as follows:

Section 9. Improvements. The standard lease form requires the lessee to post a bond in a sufficient amount to complete the construction of any improvements the lessee undertakes. In this case, if the lessee were not able to complete the construction of the wind turbines for any reason, the State would not step into the lessee's shoes to complete the erection of the turbines and operate a wind farm. Rather, the State would want to ensure that any turbines or other improvements that were partially completed were removed. So this provision requires the lessee to post a bond in the amount of \$100,000 per wind turbine as a removal bond.

Section 10. Ownership of Improvements. The proposed lease provides that the project improvements remain under the ownership of NPM until the expiration or earlier termination of the lease, at which NPM shall remove the improvements. The lease requires NPM to remove the wind turbine foundations to a depth of two feet below grade and otherwise restore the premises to the condition that existed prior to occupancy.

Section 13. Character of Use, subsection c, Transmission and communication facilities. NPM is seeking a reasonableness qualification on the Board's authority to approve the location of the turbines and related infrastructure and improvements to be constructed on the lease premises. Staff is agreeable to the reasonableness qualification. There is no basis to reserve to the Board the right to act unreasonably in disapproving the location of turbines, infrastructure and improvements.

Section 18. Liability Insurance. The proposed lease increases the insurance requirements from the standard \$1,000,000 per occurrence / \$2,000,000 aggregate to \$3,000,000 per occurrence / \$5,000,000 aggregate. Staff viewed this increase as prudent in light of the nature of NPM's operations.

Section 19. Bond, performance. In most of the general leases issued by the Board, the performance bond is calculated at twice the annual rent amount, which would equate to \$240,000 for the first 10 years of the proposed lease. Staff recommends a higher performance bond to ensure the removal of the wind turbines at the end of the lease term. The FEIS contemplates up to nine turbines will be erected. The proposed lease form provides for a performance bond of \$1,500,000, which is in addition to the removal bond mentioned in Section 9 of the lease.

Section 31. Surrender. NPM requested a one-year right-of-entry after expiration or

termination of the lease to allow it to remove its improvements and personalty from the premises. The right-of-entry is to be issued "upon reasonable terms and conditions as set forth by the Board . . . ." The alternative to the right-of-entry would be to require NPM to begin removing its improvements and personalty during the term of the lease at a time when the turbines could still be generating power under a PPA with HECO. Staff believes that authorizing a right-of-entry after lease termination for the purpose of removing improvements and personalty is a reasonable method of dealing with end of lease issues. Additionally, the surrender clause of the standard lease form requires the lessee to restore the premises to the condition that existed prior to occupancy. In the proposed NPM lease, section 10 of the lease (discussed above) covers the lessee's obligations with respect to removal of improvements at lease termination. Accordingly, the surrender provision of the proposed NPM lease is drafted to require NPM to restore the premises to the condition required by the lease.

Section 33. Hazardous materials. The standard provision was modified to provide consent to NPM's use of lubricating oil and grease, paint normally used in wind farm applications and cleaning compounds, subject to Lessee's use being within the legal and lawful regulations and standards.

Section 45. Withdrawal Right. This is a non-standard provision that gives the State the right to withdraw five acres of the lease premises and set it aside to the Division of Forestry and Wildlife for mitigation and recovery of the endangered species, *Abutilon menziesii*. The withdrawal and set-aside was approved by the Board at its meeting of February 26, 2016, item D-14, as amended. The lease requires the State to execute the withdrawal and set-aside without materially affecting NPM's plans or operations.

Section 54. Phase I environmental site assessment. The standard lease form requires the lessee to conduct a Phase I environmental site assessment prior to termination, revocation or assignment of the lease. NPM is requesting that the standard provision be qualified so that an assignment for financing purposes does not trigger a Phase I report. Staff believes this is a reasonable request and has included the financing qualification in the proposed lease.

Section 60. Lessee election of early termination of lease term. NPM can only utilize the premises if it maintains a PPA in place with HECO. Accordingly, NPM requested the right to terminate the lease if it loses the PPA. NPM would also have the right under the proposed lease to terminate the lease if it did not accept the minimum annual rent or percentage rent amount resulting from the rent reopening for years 21-40 of the lease.

Section 66. Special Conditions. The amended Development Agreement between the State and NPM imposes a number of special conditions on NPM, which are reiterated in the lease. These include: (1) obtaining a conditional use permit for the project from the City and County of Honolulu, if required, not later than two years after the date of the lease or March 31, 2018, which occurs first; (2) obtaining Board approval of a Habitat Conservation Plan and an Incidental Take License from the Division of Forestry and Wildlife for the project no later than one year after the date of the lease, or March 31, 2017, whichever occurs first; (3) providing evidence to the State of reasonable financial

ability to construct the project (e.g., balance sheets of an affiliate of Lessee or commitment (even if based on reasonable conditions, such as those provided in this Section, for financing)) no later than two years after the date of this Lease, or March 31, 2018, whichever occurs first.

NPM qualifies for the direct issuance of a lease as a renewable energy producer as defined under Sections 171-95 and -95.3 HRS. Attached as Exhibit 4 is a copy of NPM's report on the project including the information required by HRS Section 171-95.3.

At the public hearings held on the project, three people orally testified in opposition to it and one person testified in support. The opponents of the project listed a number of concerns including that Kahuku has unfairly shouldered the burden of accommodating renewable energy projects on Oahu, that the visual impacts will be significant with the wind turbines being taller than anything approved before, resulting in them being the tallest structures on Oahu, that the proposed setbacks of the turbines from schools and residences is inadequate, that there will be negative impacts to wildlife including bats and birds, that the traffic study in the FEIS was inadequate, that wind power will saturate HECO's grid so that residential users will not be able to install solar panels on their homes for electricity, that there will be significant noise impacts from the turbines, and that nobody listens to the opponents of the project. The individual who testified in favor of the project (and is also an employee of NPM) remarked that the project will improve the economy and help achieve the State's goal of 100% renewable energy. See transcripts of testimony from public hearings attached as Exhibit 3.

Several opponents of the project additionally submitted letters and emails detailing the reasons for their opposition. Copies of these letters are attached as Exhibit 5.<sup>3</sup>

Based on staff's review of the FEIS, the opponents' concerns were addressed in the FEIS. Staff understands, however, that the project opponents view the FEIS as inadequate. As the Board already accepted the FEIS at a prior meeting, staff does not believe it is appropriate to re-evaluate the sufficiency of the FEIS in this submittal.

There are no forest reserves, game management areas, wildlife sanctuaries, public hunting areas, public beaches or unencumbered public lands adjoining the proposed lease parcel. Accordingly, no public access is reserved in the lease to such areas. As referenced in Section 45 of the proposed lease, DOFAW is responsible for securing access to the five-acre portion of the premises to be used for mitigation and recovery of *Abutilon menziesii* (and such access is required to be outside of the lease premises).

NPM has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Staff

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3 Mr. Kent Fonoimoana's email dated August 25, 2016 included in Exhibit 5 contains an attachment that is a petition to former Chairperson William Aila, Jr., Governor Ige and Randy Iwase signed by numerous individuals. The entire attachment is 80 pages in length, but only the first three pages are included in Exhibit 5 to keep the length of this submittal manageable. Additionally, the petition includes the residence addresses of the signatories, and all addresses would have to be redacted if staff were to include the full petition.




believes the highest and best use of the land is for a wind energy project due to the agricultural zoning and topography of the land, and its location in an area with favorable conditions for wind energy production. In furtherance of Hawaii's Clean Energy Initiative, which sets goals for the state to achieve 100 percent clean energy by 2045 coming from locally generated renewable sources, staff recommends approval of the lease.

RECOMMENDATION:

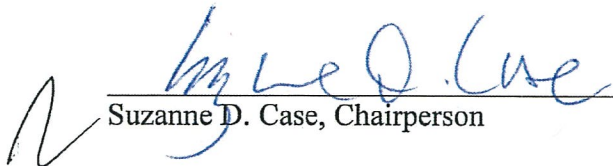
That the Board:

1. Approve the issuance of a direct lease to Na Pua Makani Power Partners, LLC, Lessee, substantially in the form of Exhibit 2 attached hereto, subject to the conditions set forth above and further subject to:
  - a. Final review and approval by the Department of the Attorney General; and
  - b. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.
2. Upon full execution of the lease by the parties, authorize the Chairperson to sign permit applications relating to the project (including, without limitation, a City and County of Honolulu Master Conditional Use Permit application) on behalf of the Board of Land and Natural Resources as landowner, subject to:
  - a. Lessee providing a standard indemnity letter in the form required by the Department; and
  - b. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,

  
Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

Land Board Meeting: October 14, 2016; D-12: Approved as submitted.

Approved as submitted. See attached page.

Land Board Meeting: October 14, 2016; D-12: Approved as submitted.

**Approved as submitted.** <sup>2</sup>

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<sup>2</sup> Kent Fonoimoana opposed the project and requested a contested case; Board denied the contested case.

REGULAR SYSTEM

Na Pua Makani Power Partners LLC  
c/o Yamamoto Caliboso LLLC  
1099 Alakea Street, Suite 1500  
Honolulu, Hawaii 96813

Total Number of Pages:

Tax Map Key No. (1) 5-6-008-006  
TCT No. 533,031

LOT 1168, MAP 137, L.C. APP. NO. 1095  
KAHUKU, KOOLAULOA, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII

## TABLE OF CONTENTS

### Page

#### TERM OF LEASE:

A.	First year rent waived .....	1
B.	Minimum Annual Rent .....	2
C.	Percentage Rent .....	2
D.	Gross Revenue defined.....	2
E.	Rent Reports .....	3
F.	Rental reopenings; dates, conduct of .....	3
G.	Repowering .....	4
H.	Interest and service charges .....	5

#### RESERVATIONS:

1.	Minerals and waters .....	5
2.	Native Tenants, prehistoric and historic remains .....	5
3.	Ownership of improvements .....	5

#### AGREEMENTS AND COVENANTS BETWEEN PARTIES:

1.	Payment of rent .....	6
2.	Taxes, assessments, etc. ....	6
3.	Utility services .....	6
4.	Covenant against discrimination .....	7
5.	Sanitation .....	7
6.	Waste and unlawful, improper or offensive use of premises .....	7
7.	Compliance with laws .....	7
8.	Right to enter .....	8
9.	Improvements .....	8
10.	Ownership of improvements .....	9
11.	Repairs to improvements .....	9
12.	Liens .....	9
13.	Character of use .....	10
14.	Assignments, etc. ....	11
15.	Subletting .....	12
16.	Indemnity .....	12
17.	Costs of litigation .....	13
18.	Liability insurance .....	13
19.	Bond, performance .....	14
20.	[Intentionally omitted] .....	15
21.	Mortgage .....	15
22.	Breach .....	16

# TABLE OF CONTENTS (cont'd)

	<u>Page</u>
23. Right of holder of record of a security interest .....	17
24. Condemnation .....	18
25. Inspection by prospective bidders .....	19
26. Acceptance of rent not a waiver .....	19
27. Extension of time .....	19
28. Justification of sureties .....	19
29. Waiver, modification, reimposition of bond and liability insurance provisions .....	20
30. Quiet enjoyment .....	20
31. Surrender .....	21
32. Non-warranty .....	21
33. Hazardous materials.....	21
34. Fire and extended coverage insurance .....	22
35. [Intentionally omitted] .....	23
36. Further assurances .....	23
37. Bond, improvement .....	24
38. Notices .....	24
39. Hawaii law .....	25
40. Exhibits - Incorporation in lease .....	25
41. Headings .....	25
42. Partial invalidity .....	25
43. Time is of the essence .....	26
44. Historic preservation .....	26
45. Withdrawal Right .....	26
46. Clearances .....	26
47. Hunting .....	27
48. Records .....	27
49. Audit and examination of books, etc. ....	27
50. Commercial operations .....	27
51. Abandoned vehicles .....	27
52. Environmental regulations .....	28
53. Removal of trash .....	28
54. Phase I environmental site assessment .....	28
55. Survey and boundary stakeout .....	28
56. Fair interpretation .....	29
57. Counterparts .....	29
58. Complete agreement .....	29
59. Renewable energy producer .....	29
60. Lessee election of early termination of lease term .....	29
61. Successors and Assigns .....	30
62. Consent or Approval .....	31

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
63. Memorandum of Lease .....	31
64. Grammatical Changes .....	31
65. Additional Definitions .....	31
66. Special Conditions .....	33
SIGNATURE PAGE .....	35

EXHIBITS:

EXHIBIT "A":	Leased Premises (For Wind Farm Purposes)
EXHIBIT "A-1":	Map Depicting Leased Premises (For Wind Farm Purposes)
EXHIBIT "B":	Assignment of Lease Evaluation Policy
EXHIBIT "C":	Withdrawn Land Area
EXHIBIT "D":	Phase I Environmental Site Assessment <u></u> <u>(portion)</u>
<u>EXHIBIT "E":</u>	<u>CUP Application</u>
<u>EXHIBIT "F":</u>	<u>Indemnity Letter</u>



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S- [\* \*]

THIS LEASE (this "Lease" or this "lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," or the "State," by its Board of Land and Natural Resources, called the "Board," and NA PUA MAKANI POWER PARTNERS, LLC, a Delaware limited liability company, whose address is 2020 Alameda Padre Serra, Suite 105, Santa Barbara, California 93103, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Sections 171-35, 171-95(a)(2), and 171-95.3, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Kahuku, Koolauloa, City and County of Honolulu, State of Hawaii, and identified herein as "Wind Project Energy Site," "Leased Premises (for Wind Farm Purposes)" or "premises", containing an area of 231.927 acres, more or less, and more particularly described in Exhibit "A" and as shown on the map marked Exhibit "A-1", attached hereto and made parts hereof.

TO HAVE AND TO HOLD the premises unto the Lessee for the term of forty (40) years commencing on the [\* \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Lease Commencement Date")], up to and including the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, [\*], subject to Lessee's rights to terminate this lease as provided in Section 60 hereof, and unless otherwise earlier terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow:

A. First year rent waived. All rent shall be waived for the first year of the term of this Lease.

B. Minimum Annual Rent. Lessee's obligations to pay Minimum Annual Rent and Percentage Rent, as described below, shall commence upon the second (2<sup>nd</sup>) year of the term of this Lease. For the second (2<sup>nd</sup>) to tenth (10<sup>th</sup>) years of the term of this Lease, the Lessee shall pay a minimum annual rent ("Minimum Annual Rent") of ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00), due in equal semi-annual installments on [\* 1<sup>st</sup> and 1<sup>st</sup>\*] of each year, payable in advance, without notice or demand. For the eleventh (11<sup>th</sup>) to twentieth (20<sup>th</sup>) years of the term of this Lease, the Lessee shall pay a Minimum Annual Rent of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00), due in equal semi-annual installments on [\* 1<sup>st</sup> and 1<sup>st</sup>\*] of each year, payable in advance, without notice or demand. Should the last year of the term of this Lease be less than a full year, the Minimum Annual Rent for such partial lease year shall be prorated.

C. Percentage Rent. For the second (2<sup>nd</sup>) to tenth (10<sup>th</sup>) years of the term of this Lease, the Lessee shall pay percentage rent ("Percentage Rent") in an amount equal to TWO AND ONE-HALF PERCENT (2.5%) of Gross Revenue, as defined below, to the extent such amount exceeds the Minimum Annual Rent in any year. For the eleventh (11<sup>th</sup>) to twentieth (20<sup>th</sup>) years of the term of this Lease, the Lessee shall pay Percentage Rent in an amount equal to TWO AND ONE-HALF PERCENT (2.5%) of Gross Revenue, to the extent such amount exceeds the Minimum Annual Rent in any year. The Lessee shall also pay Percentage Rent after the twentieth year of this lease, as determined by the rental reopening Sections F and G below. For each lease year that Percentage Rent is payable, any Percentage Rent over and above the Minimum Annual Rent shall be due and payable within forty-five (45) days after the end of the lease year. Each payment shall be accompanied by a preliminary version of the Rent Report, as defined below.

D. Gross Revenue defined. "Gross Revenue" shall mean all gross revenues actually received by Lessee during the time period in question from the sale of electricity generated by wind turbines owned by Lessee located on the premises. The term "Gross Revenue" does not include: (i) any state or federal tax credits or other benefits that may be realized by Lessee under Section 45 of the Internal Revenue Code or any other tax credits or benefits; (ii) any revenue, income, sums or benefits received from any other source; (iii) funds received from debt



financings and/or equity investments and any interest earned on such funds; (iv) amounts received from a governmental or quasi-governmental body or agency as a payment, subsidy or credit in connection with or arising out of the development or construction of the Wind Project; (v) parasitic loss (i.e., electrical energy used to power wind turbine generators or any other improvements, or in connection with Wind Project operations); or (vi) sales of electrical energy for which payment is delayed or has not been received (including, without limitation, due to a default by the purchaser thereof), except that Percentage Rent payments shall be paid on any delayed payments when such payments are actually received.

E. Rent Reports. Within sixty (60) days after its due date, Lessee shall provide to Lessor a copy of its annual general excise tax return filed with the State of Hawaii, Department of Taxation. In addition the Lessee shall keep an accurate record and account of all Gross Revenue earned for the payment period in accordance with acceptable record keeping practices within the business community. Within ninety (90) days after the end of each lease year that Percentage Rent is payable, the Lessee shall forward to the Lessor itemized statements ("Rent Reports") showing the Gross Revenue actually earned for the preceding lease year. The Rent Reports shall be in reasonable and sufficient detail to enable the Lessor to verify the accuracy of the Percentage Rent payments provided for herein.

F. Rental reopenings; dates, conduct of. The Minimum Annual Rent and Percentage Rent shall be reopened and redetermined as of the day following the expiration of the twentieth (20<sup>th</sup>) year of the term of this Lease (the "20<sup>th</sup>-Year Reopening") and at Repowering (as defined below).

The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both Minimum Annual Rent and Percentage Rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board,

and Lessee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board or the Board's appraiser (in either case, herein referred to as the "Board's appraiser"). The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing in such manner, whichever occurs first. Provided that if the Lessee does not agree upon the fair market rental as determined by the Board's appraiser, the Lessee must notify the Lessor in writing within thirty (30) days after receipt of the determination, and the Lessee shall appoint the Lessee's own appraiser whose name and address shall be stated in the notice. The Lessee shall provide the Board with the complete appraisal prepared by the Lessee's appraiser. Each party shall pay for its own appraiser. If the Board's and the Lessee's appraisers do not agree upon the lease rental, the Lessee and the Board shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of mediation and arbitration shall be borne equally by the Lessee and the Board.

In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

G. Repowering. The Lessee shall notify the Lessor in writing of any intent to repower the Wind Project located on the premises no less than nine (9) months prior to Repowering. The Lessee shall be responsible for obtaining any permits or approvals necessary for any Repowering. Following receipt of a Repowering notice by the Lessee, new Minimum Annual Rent and Percentage Rent shall be renegotiated in accordance with **Section F** above. The Minimum Annual Rent and Percentage Rent shall be deemed to be reopened and redetermined as of the day after the Repowering has been completed.

H. Interest and service charges. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each month of delinquency.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken, damaged or rendered unusable or commercially unproductive at the site(s) affected.

2. Native Tenants, prehistoric and historic remains. Any rights of native tenants, and regulatory rights and ownership rights (if any) of the State of Hawaii, over prehistoric or historic remains found in, on, or under the premises, established pursuant to state law, including Chapter 6E, Hawaii Revised Statutes.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the premises prior to or on the commencement date of the term of

this lease, excluding those improvements constructed by Lessee prior to the term of this lease (being a temporary measurement MET-tower (MET)) or constructed during the term of this lease, unless provided otherwise.

3.4. Right-of-Entry to Division of Forestry and Wildlife (DOFAW). The right of DOFAW to enter onto the area described in Right-of-Entry No. 4220 dated March 3, 2016 for mitigation and recovery of *Abutilon menziesii* purposes in accordance with the terms and conditions of such right-of-entry.

THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements on the premises, or the Lessor or Lessee in connection with the premises, are assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease. All taxes and assessments for partial years during the term of this lease shall be prorated. The Lessee shall have the right, at its own cost and expense, to refuse to pay and to contest the amount or validity of any tax or assessment by an appropriate proceeding diligently conducted in good faith which shall operate to prevent the collection of any such tax or assessment so contested or the sale of the premises to satisfy the same. Pending final judgment in an appeal from any such proceeding, the Lessor shall not have the right to pay, remove, or discharge any tax or assessment thereby contested, provided that the Lessee shall protect the Lessor and the premises from any enforcement, collection or lien by adequate surety bond or other appropriate security agreed upon by the Lessor.

3. Utility services. The Lessee shall be



responsible for obtaining any utility services deemed necessary by the Lessee for the Lessee's use and enjoyment of the premises and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part thereof, or any improvements on the premises, or the Lessee may become liable for during the term of this Lease as a result of the Lessee's use. Subject to the Rules of the Land Court of the State of Hawaii and the approval by the Board for any land disposition and consideration therefor, and laws, rules and regulations such as Hawaii Revised Statutes, Chapters 343 and 6E, to the extent applicable, the Lessee is hereby authorized to grant to Hawaiian Electric Company, Inc., together with its successors and assigns hereinafter referred to as "HECO," a right of entry for the premises, as HECO may require from time to time for (i) it or others to construct, own, operate and maintain interconnection and other facilities and equipment in connection with the Wind Project (e.g., poles, wire lines, underground power lines, guys, conduits and other appliances and equipment as may be necessary for the transmission of electricity to be used for light and power and communication and control circuits); and (ii) HECO or others to connect any portion of the Wind Project to its system. If a sublease is required for any HECO facility or equipment on the premises, then Lessee shall comply with Section 15 herein, "Subletting". If an easement or similar disposition is required for any HECO facility or equipment on the premises, then Lessee shall direct HECO to apply to Lessor for such easement or other disposition in accordance with Chapter 171, Hawaii Revised Statutes, and subject to Lessee's written concurrence thereto. ~~Subject to applicable law as aforesaid and the approval of the Board, the Lessor agrees to provide its written consent or other approval as reasonably required by HECO in connection with the same. Subject to applicable law as aforesaid and subject to approval by the Board and to the conditions approved by the Board at its meeting, the Lessor also agrees, if requested by the Lessee or HECO, to use reasonable efforts to grant directly to HECO such land rights (including, without limitation, easements, or leases) as HECO may require from time to time for the above-stated purposes.~~

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV

(human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements on the premises in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee, in connection with this Lease, shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Right to enter and inspection of premises. At reasonable times during the term of this Lease and upon prior written notice to the Lessee, the Lessor and its agents shall have the right to enter the premises and examine the state of its repair and condition, and the Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties which they are permitted by law to perform on the premises; provided, however, in the exercise of these rights and any other rights it may have under this Lease to enter upon the premises, the Lessor and the County and their agents and representatives and any persons claiming such rights under the Lessor shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.

9. Improvements. The Lessee shall, at its own cost and expense, construct the Project Improvements (as defined below) related to the Wind Project that will be located on the premises, in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson (as defined below) and in full compliance with all applicable laws, ordinances, rules and regulations, such approval not to be unreasonably withheld, conditioned or delayed. Erection of any wind turbines shall not commence until the Department of Land and Natural Resources has approved the plans and specifications for the Project Improvements as consistent with this lease, and

Lessee has furnished a removal bond for all Project Improvements in the amount of \$100,000 per wind turbine. The term of the removal bond shall survive the early termination or expiration of this lease, at least until all Project Improvements have been removed from the premises as required by this lease. The Lessee shall provide the Lessor with such a removal bond naming the Lessor as obligee. The construction and installation of the Project Improvements shall be completed free and clear from all liens, encumbrances and claims. Any grading, realigning and/or paving of any existing access road or any newly constructed access road within the premises, as may be required by the Lessee for the safe transporting of heavy equipment on the premises during the construction phase, shall be subject to all applicable laws, including but not limited to environmental laws and approval by the Lessor, and shall be solely at the cost and expense of the Lessee. Furthermore, the Lessee shall not construct, place or install on the premises any building, structure or improvement of any kind except with the prior written approval of the Chairperson and upon those conditions the Chairperson may reasonably impose, unless otherwise provided in this Lease. The Lessee shall name the Lessor as an obligee on any bond and/or guaranty agreements received from the Lessee or its general contractor.

10. Ownership of Improvements. During the term of this Lease, all improvements constructed by or on behalf of the Lessee during or prior to the term of this Lease, including, without limitation, all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein or therewith and all Project Improvements, shall be the property of the Lessee. At early termination of this Lease for whatever reason or expiration of this Lease, all such existing improvements constructed by or on behalf of the Lessee during or prior to the term of this Lease shall be deemed Lessee's property and be removed at the Lessee's sole expense, by the date no later than three hundred sixty-five (365) days after the expiration or earlier termination date of this Lease (the "Restoration Date"), unless the Lessor elects to assume ownership of the improvements in the case of an expiration of the term of this lease or the Lessor elects to assume ownership of the improvements if Lessee fails to remove them by the Restoration Date in the case of an early termination of this Lease. Lessee shall remove wind turbine foundations to a depth of two (2) feet below grade, and shall otherwise restore the premises to the condition that existed prior to occupancy. Those improvements of which the

Lessor assumes ownership shall transfer to the Lessor free of costs and free and clear of all liens, encumbrances or claims of third parties, except as may be agreed to by Lessor in writing at the time of said assumption of ownership by Lessor.

Throughout the term of this Lease, the Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer or other similar liens to stand against the premises for work or labor done, services performed, or materials used or furnished to be used in or upon the premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by the Lessee or its agents or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing shall be expressly subordinate and subject to the rights of the Lessor under this Lease.

11. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises by the Lessee in good order, condition and repair, reasonable wear and tear excepted. The Lessee shall also be obligated to repair and maintain any improvements on the premises shared with the Lessor to the extent of the Lessee's use of such improvements.

12. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall release, indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses. The Lessee shall have the right to contest any attachments, liens, charges or encumbrances recorded against the Lessor, Lessee or the premises and resulting from any works of improvement made by or for the Lessee provided (i) the Lessee contests such attachment, lien, charge or encumbrance by appropriate proceeding diligently conducted in good faith, and (ii) at the written request of the Lessor, the Lessee shall furnish a lien release bond or other security acceptable to the Lessor in the principal amount of each such attachment, lien, charge or encumbrance within sixty (60) days of said written request.

13. Character of use. Subject to applicable law and obtaining approvals from the Lessor for the improvements provided for in this lease, the Lessee shall use or allow the



premises leased to be used solely for the following purpose(s) or such other purpose(s) as may be permitted by the Lessor in writing:

a) Wind resource and other evaluations.

Subject to applicable law and obtaining approvals from the Lessor for the improvements provided for in this lease, the Lessee may conduct wind and weather monitoring activities and may erect, relocate, remove, repair, maintain, operate and replace anemometers and other wind and weather monitoring equipment, steel towers, concrete slabs, fences and buildings on the premises to properly operate, house, protect and otherwise facilitate the Lessee's wind and weather monitoring activities. With the exception of the Withdrawn Land (defined below), the Lessee may locate such improvements on such portion(s) of the premises as the Lessee may determine in its sole discretion. The Lessee may conduct meteorological, biological, environmental, soil and geologic studies at the premises.

b) Wind energy conversion systems. Subject to applicable law and obtaining approvals from the Lessor for the improvements provided for in this lease, the Lessee may develop, erect, relocate, remove, repair, repower, maintain, operate and replace wind turbines and related equipment and improvements of any type and in such quantity on such portion(s) of the premises as the Lessee determines in its sole discretion, including, without limitation, those improvements listed as the Project Improvements below.

c) Transmission and communication facilities. Subject to applicable law and obtaining approvals from the Lessor for the improvements provided for in this lease, the Lessee may erect, install, relocate, remove, maintain, repair, operate and replace facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the wind turbines and related equipment, including, without limitation, the following, at such locations on the premises as Lessee shall determine with Lessor's approval, which shall not unreasonably be withheld: underground and/or overhead distribution, collection and transmission lines; underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers and transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors;

and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

d) Roads and access. Subject to applicable law and obtaining approvals from the Lessor for the improvements provided for in this lease, the Lessee may install and use new roads on and across the premises and use and improve any existing and future roads and access routes on the premises, except that use of existing roads and access routes on the premises shall not require Lessor's further review and approval after execution of this lease. In order to control access to the premises for the purpose of protecting the integrity of the Lessee's improvements and operations thereon, the Lessee, with Lessor's approval, may install fences and gates on the premises along or near any or all roadways and access routes providing ingress to or egress from the premises.

e) Wind. The Lessee shall have the use and enjoyment of the free flow of wind across the premises without interference from the Lessor.

14. Assignments, etc. Except as otherwise provided in this lease, the Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion thereof, or transfer or assign this lease or any interest herein, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made contrary to the terms of this lease shall be null and void; provided that with the prior written approval of the Board, the assignment and transfer of this Lease, or any interest therein, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the "Assignment of Lease Evaluation Policy" adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "B". The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

If the Lessee is a partnership, joint venture, limited liability company, or corporation, the sale or transfer of 20% or more of ownership interest, distributional interest, or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this Section and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit B.

15. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

16. Release and Indemnity. Except to the extent caused by the gross negligence or intentional acts of the Lessor or its employees, contractors or agents, the Lessee shall release, indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (a) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; (b) any failure on the part of the Lessee to maintain the premises and any access road or State land surrounding the premises, in the Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and (c) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments relating to this lease.

17. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee with respect to

this lease or the Lessee's occupancy or use of the premises (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other applicable charges attributable to the premises or this lease and payable by the Lessee hereunder.

18. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$3,000,000.00 for each occurrence and \$5,000,000.00 aggregate and with coverage terms acceptable to the Chairperson of the Board based on standard coverage for similar uses in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. A copy of the policy or other documentation required by the Lessor shall be filed with the State of Hawaii, Department of Land and Natural Resources. For purposes of this **Section 18 and Section 34** of this lease, the phrase, "other documentation required by the Lessor," or similar, shall mean such documentation as may reasonably be required by the Lessor to provide the Lessor with evidence that the insurance that Lessee is required to obtain under this lease, is being obtained by the Lessee during the term of this lease. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent or abutting to the premises in the use or control of the Lessee, or although not in the control, in use by the Lessee during the term of this lease or any restoration period.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a copy of the policy(s) or other documentation required by the Lessor showing the policy(s) to be initially in force, keep copies of the policy(s) or other documentation required by the Lessor on deposit during the entire lease term, and furnish copies of like

policy(s) or other documentation required by the Lessor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) or other documentation required by the Lessor that are or were in effect during the lease period.

The Lessor shall retain the right every five years of the term of this Lease to review the coverage, form, and amount of the liability insurance required by this lease. If, in the opinion of the Lessor, the liability insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain liability insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable, but shall be designed to assure protection for and against the kind and extent of the risks that may be caused by or attributable to the use of the Premises by Lessee which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the liability insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Lessor, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease, except as may be otherwise provided in this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy pursuant to this Section.

19. Bond, performance. The Lessee shall, at its own cost and expense, on or prior to the earlier of (i) the date one hundred eighty (180) days after the Lease Commencement Date; or (ii) the commencement of construction of the Project Improvements, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease (and

during any additional period of time that the Lessee requires to remove the Project Improvements and restore the premises), a surety bond, letter of credit or other form of surety satisfactory to the Lessor, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to \$1,500,000. This bond shall provide that in case of the Lessee's uncured breach or default of any of the terms, covenants, conditions or agreements of this lease, the Lessor may draw upon the bond as liquidated and ascertained damages and not as a penalty, to the extent required to remedy such uncured breach of default. This performance bond shall survive the early termination or expiration of this lease, and at least until all improvements have been removed from the premises, and the restoration of the premises to the condition prior to the effective date of this lease, to the extent that such removal and restoration is required under this lease. In addition, after the Restoration Date, the Lessor may draw upon the bond in order to remove the Project Improvements required to be removed by Lessee hereunder, and restore the premises to its original condition, to the extent that the Lessee has failed to satisfy its obligations under this lease to do so by the Restoration Date. Any portion of a bond, security deposit or other security held by the Lessor and not applied to cure a breach or default of the Lessee under this Section or not applied to remove the Project Improvements and restore the premises as provided in this Section shall be promptly returned to the Lessee. If Lessor removes the Project Improvements pursuant to the terms of this lease, and the bonds provided under this Section 19 and Section 9 of this lease are deficient to cover Lessor's total cost for removal, then at the time of such removal, the Lessee shall after written notice from Lessor providing reasonable evidence of Lessor's total cost for removal, deposit with Lessor within thirty (30) days after such written notice, an amount equal to such deficiency to cover the Lessor's total expense. The provisions of this Section shall survive the expiration or earlier termination of this lease.

20. [Intentionally omitted].

21. Mortgage. Except as provided in this Lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease without the prior written approval of the Chairperson, which approval shall not be unreasonably withheld or delayed, and any mortgage, hypothecation, or pledge without the approval shall be null and

void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this Lease, or any interest, or create a security interest in the leasehold of the premises. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, the United States Department of Agriculture, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

Should the Lessee mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease to any person(s) in accordance with and as permitted in this Section, then such person(s) are sometimes herein referred to individually, as a "Lender", and collectively, as the "Lenders".

22. Breach. Time is of the essence in this Lease. If (a) the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or (b) the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and

conditions contained in this lease and on its part to be observed and performed, and said breach or default shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject to such additional period(s) of time to cure such breach or default as the Lessor may allow for good cause, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements constructed or installed upon the premises by the Lessee shall remain and become the property of the Lessor or shall be removed by the Lessee, subject to the Lessee or any Lenders electing to remove any or all of the Project Improvements; furthermore, the Lessor shall retain all rent paid in advance by the Lessee to be applied to any damages incurred by the Lessor.

23. Right of holder of record of a security interest. Whenever any notice of breach or default is given to the Lessee under the terms of this Lease, a copy of the notice shall be delivered by the Lessor to all holders of record of any security interest in the premises whose security interest has been recorded with the Lessor. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants, restrictions, or conditions of the lease capable of performance by said holder, as determined by the Lessor, within thirty (30) days, for any default or breach of rent payment, or within sixty (60) days, for any other default or breach, from the date of receipt of the Lessor's notice of breach or default, or within an additional period allowed by Lessor for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. This lease shall not be subject to the requirements in Section 171-14, Hawaii Revised Statutes. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the



amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies under this Section shall not operate as a waiver of the right or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. Section 171-19, Hawaii Revised Statutes, to the contrary notwithstanding, the proceeds of any such disposition shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

24. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned for public purposes by any county or city and county, or any other governmental agency or subdivision, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (and not from the Lessor unless the Lessor is the condemning authority) compensation for the economic loss incurred by Lessee from such condemnation, including, without limitation, the proportionate value of the Lessee's improvements so taken in the proportion that it bears to the unexpired term

of this lease; provided, that the Lessee may, in the alternative but shall not be required to, remove and relocate its improvements to the remainder of the premises occupied by the Lessee and seek such costs of relocation from the condemning authority. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law against the condemning authority. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the improvements constructed, erected and/or placed by it or on its behalf on the premises within any reasonable period allowed by the Lessor.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition of the premises after this Lease term for purposes of informing and apprising that person or persons of the condition of the premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after written notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option, unless provided expressly otherwise in this lease or in writing by Lessor.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the

bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, and shall remove all improvements constructed or made by the Lessee in connection with this lease, including, without limitation, the Project Improvements, whether constructed or made by the Lessee during or prior to the term of this lease, in accordance with **Section 10** of this lease by the Restoration Date. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises by the Restoration Date and the parties have not otherwise agreed to leaving such personal property for Lessor, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. The Lessor shall grant Lessee, upon reasonable terms and conditions as set forth by the Board, a twelve month right-of-entry following expiration or earlier termination of this lease to remove such improvements and personalty at the Lessee's sole cost and expense. The Lessee shall restore the premises to the condition as provided for in this lease. This provision shall survive the termination of this lease.

32. Non-warranty. The Lessor does not warrant the condition of the premises, as the same are being leased as is, where is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous

materials on the premises or any location off the premises to which it is determined any hazardous materials have migrated, by or as a result of the Lessee's action, except as permitted by law. Lessee shall not allow the storage or use of such materials on the premises in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If allowed by law, Lessor hereby consents to the lawful use of lubricating oil and grease, paint normally used in wind farm applications and cleaning compounds, subject to Lessee's use being within the legal and lawful regulations and standards. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee on the premises, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to release, indemnify, defend, and hold harmless Lessor from any damages and claims resulting from the release of hazardous materials on the premises if (a) such release occurs while Lessee is in possession, and is caused by any person other than the Lessor or persons acting under the Lessor and such release occurs on or at any portion of the premises that is under the control of the Lessee, or (b) elsewhere if such release is caused by the Lessee or persons acting under the Lessee. These covenants shall survive the expiration or earlier termination of this lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this Lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the premises by the Lessee in the joint names of the Lessor and the Lessee, with the standard mortgage clause for any Lender, as their interests may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy(s).

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same facilities in a good and substantial manner according to plans and specifications approved in writing by the Chairperson; provided, however, with the approval of the Lessor that the Lessee may instead surrender this Lease and pay the balance owing on any mortgage. Upon surrender of the Lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, with the Lessor to be paid the balance of the proceeds. Upon such surrender, Lessee may remove any improvements placed by it or on its behalf on the premises within any reasonable period allowed by the Lessor.

The Lessee shall furnish the Lessor on or before the commencement date of this Lease, a copy of the policy or other documentation required by the Lessor showing the policy(s) or other documentation required by the Lessor to be in full force and effect and shall furnish a like copy of the policy or other documentation required by the Lessor upon each renewal of the policy(s). Each copy of the policy or other documentation required by the Lessor shall contain or be accompanied by an assurance from the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

Notwithstanding the foregoing, the Lessee shall not be required to provide the insurance required in this Section until the start of construction of any improvements on the premises,

or the installation of any equipment or other personal property on the premises, whichever occurs first.

35. [Intentionally omitted].

36. Further assurances. Lessor expressly agrees that it will from time to time enter into reasonable nondisturbance agreements with any Lender which requires such an agreement providing that Lessor shall recognize the rights of the Lender and not disturb its possession of the premises so long as it is not in default of any of the provisions of this Lease. Lessor and Lessee further agree that they shall, at any time during the term of this Lease within twenty (20) days after a written request by the other party, provided that the documents accurately and truthfully reflect the matters contained therein, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or modified and stating the modifications). The statements shall also state the dates to which the payments and any other charges have been paid and that there are no known defaults existing or that defaults exist and the nature of such defaults. If applicable law requires Board approval for any such foregoing statement, Lessor shall obtain necessary Board approval in a prompt and timely manner.

37. Bond, improvement. Lessee shall ensure that its contractor shall, prior to commencing construction of Lessee's improvements on the premises, procure and deposit with the Lessor a copy of a surety bond (covering labor, materials, supplies and equipment), acceptable to the Chairperson, in an amount equal to the cost of construction of Lessee's improvements and equipment being placed on the premises, which bond shall name the Lessor and the Lessee as obligees, conditioned upon the faithful observance and performance of the contractor constructing the improvements and installing the equipment in accordance with its contract(s) for the premises, and conditioned upon those improvements and equipment and completion of such being free and clear of all liens, encumbrances and payment claims, and Lessee agrees that it shall release, indemnify, defend, and hold the Lessor harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the Lessee's construction of improvements or installation of equipment on the premises, except if the same is caused by the gross negligence or intentional acts of Lessor or any of its employees, contractors or agents.

38. Notices. All notices or other communications required or permitted hereunder, including notices to a Lender, shall, unless otherwise provided herein, be in writing, and shall be either (a) personally delivered with evidence of receipt by the receiving party, (b) delivered by reputable mail delivery company with proof of delivery, or (c) sent by registered or certified mail, return receipt requested, postage prepaid, and shall be addressed to the parties at the addresses set forth in this Section below. Notices shall be deemed given on the day so delivered, or upon the date of attempted delivery if the addressee rejects said notice or if failure of delivery is otherwise caused by the fault of the addressee. Notice of change of address shall be given by written notice in the manner detailed in this Section, provided that Lessee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Lessees hereunder, notice to one Lessee shall be deemed notice to all Lessees. Below are the names and addresses of the Lessor, Lessee, and if known as of the date of this Lease, Lender:

If to the Lessor: Board and Department of Land and  
Natural Resources  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Attention: Chairperson

And a copy to: Department of the Attorney General  
Attention: Land/Transportation  
Division  
Kekuanaoa Building  
465 South King Street, Suite 300  
Honolulu, Hawaii 96813

If to the Lessee: Na Pua Makani Power Partners, LLC  
Attention: Mike Cutbirth  
2020 Alameda Padre Serra, Suite  
105  
Santa Barbara, California 93103

And a copy to: Yamamoto Caliboso  
Attn: Dean T. Yamamoto  
1099 Alakea Street, Suite 2100  
Honolulu, Hawaii 96813

~~If to the Lender:~~ \_\_\_\_\_



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39. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

40. Exhibits - Incorporation in lease. All exhibits referred to herein are attached to this lease and hereby are deemed incorporated by reference.

41. Headings. The article, paragraph and section headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

42. Partial invalidity. If any term, provision, covenant or condition of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this lease and the application to such remaining persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

43. Time is of the essence. Time is of the essence in all provisions of this lease.

44. Historic preservation. In the event any known or unknown (at the time of execution of this Lease) historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

45. Withdrawal Right. The Lessor shall have the right to withdraw a portion of the premises (the "Withdrawn Land"), as shown on the map attached hereto as Exhibit "C", from the premises and this Lease, at any time during the term of this Lease upon giving reasonable written notice to the Lessee, and without compensation, except as otherwise provided in this Lease, for the sole purpose of permitting the Withdrawn Land to

be used by the State of Hawaii Division of Forestry and Wildlife for the mitigation of abutment at no reduction of Lessee's rent. It shall be Lessor's responsibility, at its sole cost, to take all necessary actions, to effectuate such withdrawal of the Withdrawn Land, and to do so in accordance with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and in a manner that does not materially or adversely affect the Lessee, Lessee's plans or operations, the Wind Project or the premises. The Lessee shall not construct any Project Improvements on the Withdrawn Land at any time. The Lessor will not require any additional rights, privileges or requirements (e.g., access rights over the premises) under this Lease or pertaining to the premises due to the Withdrawn Land or the exercise of the Lessor's rights under this Section. The Lessee agrees to cooperate with the Lessor's reasonable requests for the Lessee's assistance in Lessor's efforts to effectuate the foregoing, including, without limitation, amending this Lease, provided that the Lessee shall not incur any additional costs or liabilities in connection with the same.

46. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances, permits and approvals in connection with this lease.

47. Hunting. No hunting shall be allowed on the premises during the term of this Lease.

48. Records. The Lessee shall prepare, maintain and keep records of Wind Data, as defined herein, and management practices conducted on the premises, including, but not limited to, the use of pesticides, for the term of this Lease or as required by law or any permit.

49. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon not less than twenty-one days' prior written notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee for the purpose of verifying compliance with the rent provisions of this Lease, including, without limitation, records indicating the amount of electric production and delivery to the power purchaser and/or proceeds received by the Lessee from the power purchaser. If an audit shows an underpayment of more than three percent (3%) between the percentage rent payable for the audited period and the amount

actually paid for percentage rent for the audited period, the Lessee shall immediately pay for the difference, plus the cost of the audit. If the audit shows that the percentage rent paid is more than the percentage rent which should have been paid for any period, Lessor shall immediately credit such excess amount against future rent payable by Lessee under this Lease, or refund said excess to Lessee if no further rent is payable under this lease.

50. Commercial operations. The Lessee, its employees, customers, guests, agents or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. Except as otherwise provided in this lease, no commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

51. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises, and Lessor agrees to reasonably cooperate with Lessee in Lessee's fulfillment of the same (e.g., permit Lessee to place gates or fences or take other security measures on the premises). Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

52. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

53. Removal of trash. The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee's consent, and whether or not placed on the premises prior to the term of this lease, provided that Lessor shall not place any trash upon the premises, in which case, removal of such trash shall be Lessor's responsibility.

54. Phase I environmental site assessment. Prior to termination or revocation of this lease or the assignment of the leasehold (excluding an assignment by Lessee solely for financing purposes), unless otherwise agreed to by Lessor in

writing, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. However, Lessee shall not be responsible for addressing, abating or disposing of any environmental conditions existing prior to the term of this lease as evidenced by the Phase I ~~environmental~~ Environmental site Site assessment Assessment (Phase I ESA) dated May 20, 2014 that was paid for and conducted by Lessee prior to the term of this lease and reasonably accepted by Lessor prior to the Lease Commencement Date, a copy of title page, index table of contents and executive summary of which is attached hereto as Exhibit "D" (the complete Phase I ESA consists of 328 pages which are incorporated herein by reference). Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of this lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment (excluding an assignment by Lessee solely for financing purposes) unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

55. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the premises which it desires to conduct.

56. Fair interpretation. The parties agree that the terms and provisions of this Lease embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor, nor more strictly against, either party.

57. Counterparts. This Lease may be executed and recorded in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

58. Complete agreement. This Lease, and the exhibits hereto, contain the entire agreement between the parties hereto with respect to the subject matter hereof and any prior agreements, discussions or understandings, written or oral, are superseded by this Lease and shall be of no force or effect. No addition or modification of any term or provision of this Lease

shall be effective unless set forth in writing and signed by the authorized representatives of the parties and approved by the Board.

59. Renewable energy producer. The Lessee understands and agrees that this Lease is being issued by direct negotiation pursuant to Section 171-95, Hawaii Revised Statutes ("HRS"). Throughout the term of this Lease, the Lessee shall be and remain a "renewable energy producer" and the Lessee shall not assign or transfer this Lease to any entity that does not qualify as a "renewable energy producer." A violation or other breach of this provision shall be considered a material default under this Lease. However, the Lessee shall not be in breach of this provision in any of the following cases: (a) a grant of any right of entry to HECO as permitted in Section 3 of this Lease; (b) any case not deemed an assignment under Section 14 of this Lease; (c) any transfer of interest for security or financing purposes which is contemplated under Sections 21 and 23 of this Lease; or (d) any other assignment or transfer as may be consented to by the Lessor in connection with this Lease and approved by the Board.

60. Lessee election of early termination of lease term. Provided the Lessee is in full compliance with all of the terms and conditions of this Lease, the Lessee shall have the right to terminate this Lease, at any time during the term of this Lease, if the power purchase agreement (the "PPA") between the Lessee and HECO expires or terminates or shall expire or terminate, for any reason, by providing Lessor with no less than one (1) year's prior written notice of such termination, provided, that from and after the expiration or termination date of the PPA, Lessee shall not be obligated to pay Percentage Rent under this Lease. The parties agree; however, that if the Lessee exercises its early termination right as provided in this paragraph, the Lessee may elect, in writing, to have the actual termination date of this Lease be a date earlier than the date one (1) year from the notice of termination, if the Lessee shall pay the Lessor a termination fee equal to the Minimum Annual Rent payable under this Lease for the period commencing on the date of the notice of termination and continuing for one (1) year thereafter (or, if the Minimum Annual Rent for such 1-year period is undetermined, then equal to the Minimum Annual Rent payable under this Lease for the one (1) year period immediately prior to the notice of termination), provided that the actual termination date of this Lease shall not be earlier than the expiration or termination date of the PPA.



In addition, provided the Lessee is in full compliance with all of the terms and conditions of this Lease, the Lessee shall have the right to terminate this Lease, if Lessee does not accept, for any reason, the Minimum Annual Rent and/or Percentage Rent amount(s) resulting from any reopening and redetermination thereof as provided for in Sections F and/or G above, by providing Lessor with no less than 90 days' prior written notice of such termination, which notice shall be provided to Lessor no more than sixty (60) days after Lessee's receipt of the final determination of the reopened and redetermined rent amount(s). The parties agree that in such case, for any period for which the reopened and redetermined rent amount(s) would have taken effect, Lessee shall pay Minimum Annual Rent and/or Percentage Rent through the termination date of the Lease based on the amounts/rates payable therefor immediately prior to when the reopened and redetermined rent amounts were to take effect. The parties further agree that in such case of early termination of this Lease by Lessee, Lessee will reimburse Lessor for the costs incurred by Lessor for any appraisal conducted in determining such reopened and redetermined rent amounts.

Any election of early termination by the Lessee is subject to Sections 10 and 31 above.

61. Successors and Assigns. All of the covenants, agreements, terms and conditions contained in this Lease shall apply to, accrue to the benefit of and be binding upon Lessor and Lessee and their respective successors and permitted assigns.

62. Consent or Approval. Except as otherwise provided in this lease (e.g., certain consents to assign or sublease) or by law, whenever the consent or approval of a party shall be required under the terms of this Lease, the consent or approval of such party shall not be unreasonably or arbitrarily withheld, delayed or conditioned.

63. Memorandum of Lease. Lessee may or may not elect to record this lease; provided, however, that upon request by either party, a short form memorandum of this Lease shall be prepared by the requesting party, which memorandum will be in a form agreeable to both parties and shall be duly executed and acknowledged in proper form and may be placed on record so as to give public notice of the existence of this Lease.

64. Grammatical Changes. The use of any gender shall include all genders, and if there is more than one lessor or lessee, then all words used in the singular shall extend to and include the plural.

65. Additional Definitions. As used in this Lease, unless clearly repugnant to the context:

a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor(s).

b) "County" means the City and County of Honolulu.

c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

d) "Premises" means the land leased hereunder and all buildings and improvements (including roads within the premises) now or hereafter constructed or installed on the land leased; provided, however, that the definition of "premises" shall in no way modify or qualify the terms and provisions of Section 10 above. In the event of a conflict between the definition of "premises" in this subsection and terms and provisions of Section 10 above, Section 10 shall control. The intent of the parties in defining "premises" broadly in this subsection is to ensure that the indemnity and liability provisions of this Lease extend to both the land described in Exhibit "A" and all improvements now existing or hereafter constructed or installed on the land.

e) "Project Improvements" includes all equipment and improvements necessary or useful for the conversion of wind energy into electricity and the control and transmission of the same, as determined by the ~~lessee~~ Lessee, which may include, without limitation, the following: large wind turbine generators, steel towers, foundations and concrete pads, footings, guy wires, anchors, poles, crossarms, maintenance, security and/or ancillary office facilities, and other fixtures and facilities, staging areas for the assembly of equipment, required lines and cables (e.g., overhead and underground), and substation facilities to transfer power from the generators to



power transmission lines, energy storage devices, supporting structures, transformers, switching and connection enclosures, interconnection and switching facilities, metering systems, control, communications and radio relay systems and equipment, auxiliary equipment and other power production equipment, meteorological towers and other wind and weather monitoring equipment, service buildings, access controls (gates, cattle guards and fences), security cameras, safety and wind project identification signage and roads that may be used in connection therewith located on the premises, and any improvements, fixtures, facilities, appliances, machinery and equipment related or associated to any of the foregoing.

f) "Renewable energy producer" means any producer of electrical energy produced by wind that sells all of the net power produced from the premises to an electric utility company regulated under Chapter 269, HRS; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility may be derived from fossil fuels. Renewable energy producer shall also include such other instances included in the definition thereof in Section 171-95, HRS.

g) "Repowering" means: (i) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models, or (ii) a significant modification to the portion of the Wind Project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises. The following shall not constitute Repowering: (1) reuse of the Project Improvements, including, without limitation, roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of any Wind Project substation for any reason, (3) replacement of wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and Project Improvements on the premises as a result of casualty or loss.

h) "Waste" includes, but is not limited to, (i) permitting the premises, or any portion thereof, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (ii) permitting a substantial increase in noxious weeds in

uncultivated portions of the premises; and (iii) failure to employ all of the usable portions of the premises.

i) "Wind Data" means maps showing the locations and orientation of anemometer or other towers, including Universal Transverse Mercator coordinates and heights of towers, all wind survey data collected (data shall be formatted to include at a minimum monthly speed, direction and other useful reports generated by off-the-shelf commercial software provided by the manufacturer of the wind monitoring equipment) and any interpretations, reports or conclusions derived from this data.

j) "Wind Project" means an integrated wind energy generation system, consisting of one or more wind turbines and/or other Project Improvements that are constructed, installed and/or operated on the premises and/or on other lands in the general vicinity of the premises by lessor or a third party authorized by lessor.

k) "Days" shall mean calendar days, unless otherwise specified.

l) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

66. Special Conditions. Lessor and Lessee agree that this Lease is conditioned upon Lessee fulfilling all of the following conditions which remain unsatisfied as of the date of this Lease, each of which is deemed material for the effectiveness of this Lease:

a) If required for the construction of the Wind Project, Lessee shall obtain a Conditional Use Permit from the City and County of Honolulu no later than (i) two (2) years after the date of this Lease, or (ii) ~~October~~ March 31, 2018, whichever of (i) or (ii) shall first occur. In order to comply with this condition: (A) Lessor shall sign and deliver to Lessee, as landowner, the County Master CUP Application form attached hereto as Exhibit "E" and (B) Lessee shall execute and deliver the Indemnity Letter to Lessor attached hereto as Exhibit "F", both (A) and (B) to be completed no later than ten (10) days after the full execution of this Lease;

b) Lessee shall obtain Board approval of a Habitat Conservation Plan ("HCP") and secure an Incidental Take License ("ITL") from the Division of Forestry and Wildlife of the Department of Land and Natural Resources of the State of Hawaii for the Wind Project no later than (i) one (1) year after the date of this Lease, or (ii) March 31, 2017~~2018~~, whichever of (i) or (ii) shall first occur (the "Initial HCP/ITL Deadline"), provided that, if, at the time of the Initial HCP/ITL Deadline, any contested case hearing pertaining to the HCP/ITL has not been concluded or is appealed or is subject to appeal, or if a decision of the Board on the HCP/ITL is subject to any further challenge or court action or such a challenge or court action is then occurring, then the Initial HCP/ITL Deadline shall be extended to a date that is ninety (90) days after the later to occur of (A) the conclusion of the contested case hearing or any appeals thereof; or (B) the deadline by which an appeal must be filed regarding the Board's decision in the contested case; and

Forma

c) Lessee shall provide evidence to Lessor of reasonable financial ability to construct the Wind Project on the Premises (e.g., balance sheets of an affiliate of Lessee or commitment (even if based on reasonable conditions, such as those provided in this Section, for financing) no later than (i) two (2) years after the date of this Lease, or (ii) March 31, 2018, whichever (i) or (ii) shall first occur.

~~Lessor agrees to present the Habitat Conservation Plan to the Board for approval at a public meeting within a reasonable time. For purposes of this provision, 30 days after the later to occur of (i) the Endangered Species Recovery Committee recommending approval, or (ii) the date of this Lease, or longer for good reason, shall be deemed reasonable.~~

If any of the conditions set forth in subparagraphs a), b) or c) of this Section above are not satisfied within the time allowed therefor, then Lessor and Lessee shall each have the right to immediately terminate this Lease by providing written notice of such termination to the other party, provided that Lessor agrees that it must provide such notice to Lessee before Lessee satisfies all of the applicable conditions set forth in such subparagraphs a), b) and c), regardless of whether satisfied within the time allowed therefor as stated in such conditions. If this Lease is properly terminated pursuant to this Section, then this Lease shall be deemed to be null and void ab initio. Notwithstanding the foregoing, the termination of the Lease shall not excuse Lessee from paying rent due to Lessor for the

period after the end of the one-year rent waiver set forth above up to the termination date of the Lease.

[SIGNATURES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on \_\_\_\_\_.

By \_\_\_\_\_,  
Chairperson  
Board of Land and  
Natural Resources

LESSOR

NA PUA MAKANI POWER PARTNERS, LLC,  
a Delaware limited liability  
company,

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at  
time of  
notarization.

No. of Pages: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_ Circuit  
(in which notarial act is performed)

\_\_\_\_\_  
Signature of Notary      Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at  
time of  
notarization.

No. of Pages: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_ Circuit  
(in which notarial act is performed)

\_\_\_\_\_  
Signature of Notary      Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary



EXHIBIT "A"

LEASED PREMISES (FOR WIND FARM PURPOSES)

[TO BE ATTACHED]



STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,538

September 9, 2016

WIND ENERGY PROJECT SITE

Kahuku, Koolauloa, Oahu, Hawaii

Being Lot 1168 as shown on Map 137 of Land Court Application 1095 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii containing an AREA OF 231.927 ACRES and covered by Transfer Certificate of Title 533031 issued to the State of Hawaii (Land Office Deed S-28029).

TOGETHER WITH access to a public road, Kamehameha Highway, over Lots 1158 and 1161 as shown on Map 135 as set forth by Land Court Order No. 118661 filed on November 10, 1994.

Lot 1168 is SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 533031.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: *Gerald Z. Yonashiro*  
Gerald Z. Yonashiro  
Land Surveyor

rk

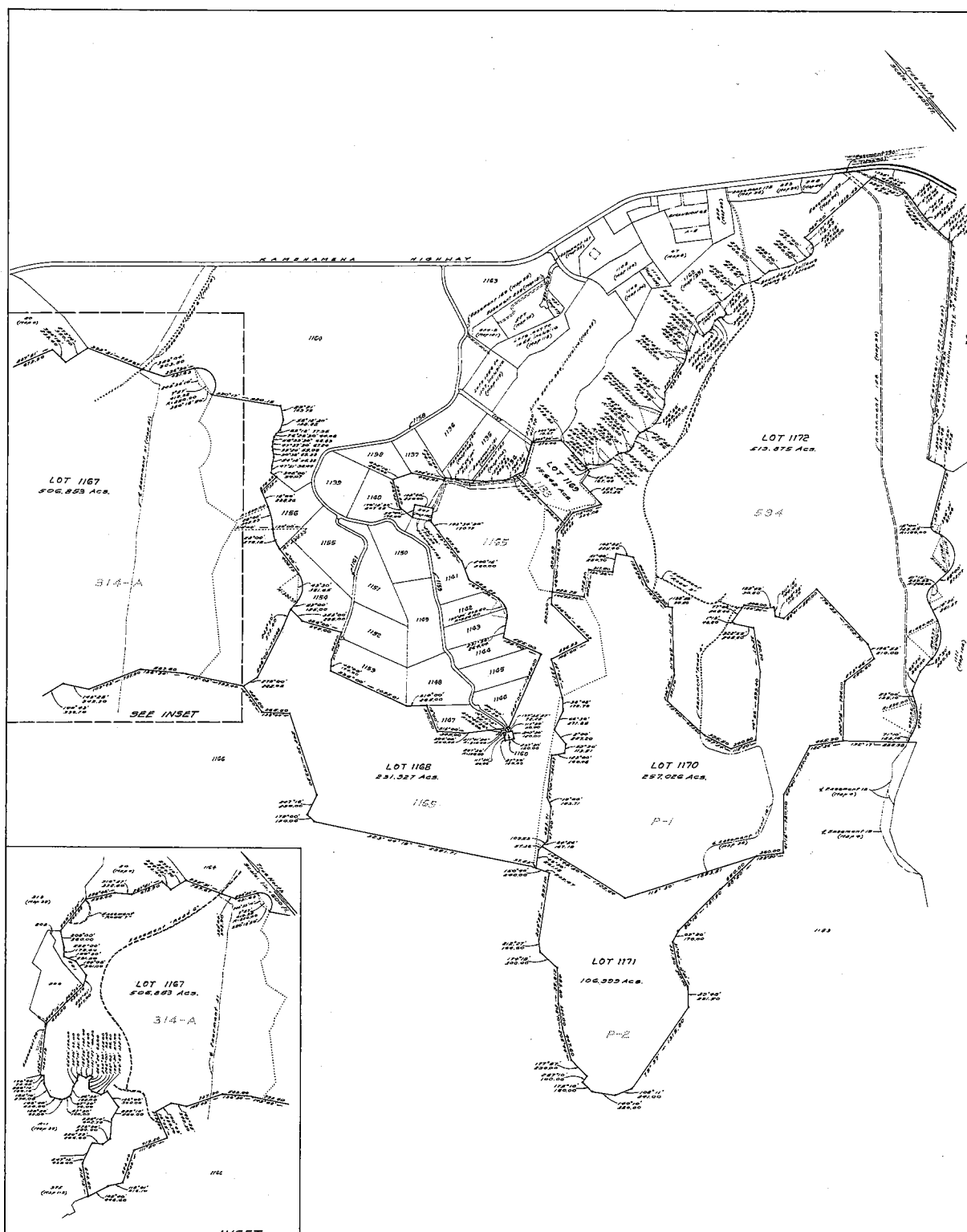
Compiled from Ld. Ct. Records.

**EXHIBIT A**

EXHIBIT "A-1"

MAP DEPICTING LEASED PREMISES (FOR WIND FARM PURPOSES)

[TO BE ATTACHED]



LAND COURT  
STATE OF HAWAII  
LAND COURT APPLICATION 1095  
CONSOLIDATION OF LOTS P-1 AND P-2  
AS SHOWN ON MAP 38  
LOT 314-A AS SHOWN ON MAP 83  
LOT 534 AS SHOWN ON MAP 39  
LOTS 1133 AND 1165 AS SHOWN ON MAP 135  
AND RESUBDIVISION OF SAID CONSOLIDATION  
INTO LOTS 1167 TO 1172, INCLUSIVE  
AT KANUKU, KOOLAULOA, OAHU, HAWAII

480 E. Iliwa Road  
Honolulu, Hawaii  
January 25, 1994

HALTER & THOMPSON, INC.  
Halter & Thompson, Inc.  
Halter & Thompson, Inc.  
Halter & Thompson, Inc.

OWNERS: TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF JAMES CAMPBELL, DECEASED  
TRANSFER CERTIFICATES OF TITLE: 17850 (Lots P-1, P-2,  
314-A and 534),  
440,587 (Lots 1133 and 1165)

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED: OCTOBER 25, 1994  
BY ORDER OF THE COURT:  
[Signature]  
REGISTERAR OF THE LAND COURT

Filed September 1, 1994  
Richard H. Henshaw, Deputy Register

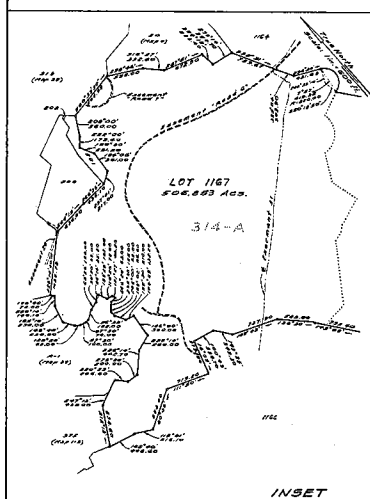


EXHIBIT A-1

EXHIBIT "B"

ASSIGNMENT OF LEASE EVALUATION POLICY

[TO BE ATTACHED]

## ASSIGNMENT OF LEASE EVALUATION POLICY

### 1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a)(5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

### 2. Qualifying Leases.

This policy shall be applicable to the subject lease.

### 3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a)(5), HRS.

### 4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same



proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

SCHEDULE A.      Adjusted Depreciated Cost of Improvements or Renovations

1.      Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)\* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2.      Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3.      Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

\*As published by the U.S. Department of Labor, Bureau of Labor Statistics

<u>Example</u>	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1.      Adjusted Cost of Improve-	Expired term:	57 mos.
ments or Renovations	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2.      Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3.      Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B.      Adjusted Depreciated Cost of Trade Fixtures

1.    Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)\* and divide the result by the CPI of the year in which the purchase was made (base year).

2.    Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3.    Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

\*As published by the U.S. Department of Labor, Bureau of labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1.    Adjusted Cost of Trade	Expired term:	57 mos.
Fixture	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost X } \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \text{ X } \frac{118.1}{104.6} + \$1,705$$

2.    Depreciation

$$\$1,705 \text{ X } \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3.    Adjusted Depreciated Cost of Trade Fixture

\$1,705 - \$1,012 = \$ 693

SCHEDULE C.      Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

SCHEDULE D.      Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- <u>693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E.      Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.



No inventory was included in either consideration.  
 However, a premium of \$45,055 was paid to the state by the  
 previous occupant from the \$600,000 consideration.

1. Net Consideration Received: \$1,000,000
  
2. Consideration Paid: \$600,000  
 Premium: - 45,055  
 Net Consideration Paid: \$554,945
  
3. Adj Value Consideration (improvements):  

$$\begin{array}{rcl} \$554,945 & \times & \frac{156.4}{121.1} \\ & & = \end{array}$$

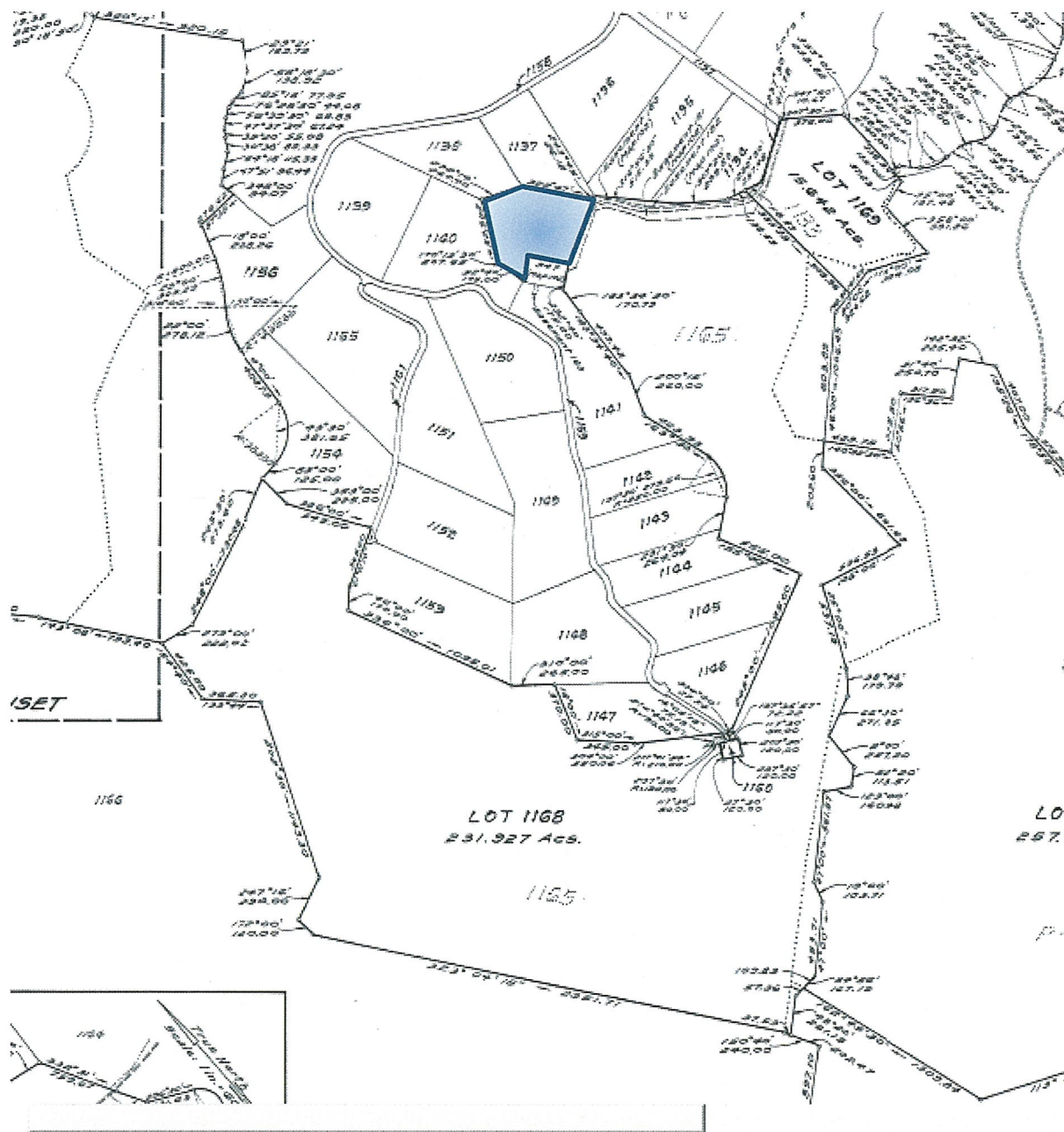
$$\begin{array}{rcl} \$716,708 & & \\ & & \underline{-187,960} \end{array}$$
  
 Depreciation:  

$$\begin{array}{rcl} \$716,708 & \times & \frac{107 \text{ mos.}}{408 \text{ mos.}} \\ & & = \end{array}$$
  
 Adj Dep Value Consideration: - 528,748
  
4. Excess: \$ 471,252
  
5. Premium: Percentage: 45% \$ 212,063

EXHIBIT "C"

WITHDRAWN LAND AREA

[TO BE ATTACHED]



Lot 1168 of Map 137 of Land Court Application No. 1095

Proposed *Abutilon menziesii* mitigation and recovery area

## EXHIBIT C

EXHIBIT "D"

PHASE I ENVIRONMENTAL SITE ASSESSMENT

[TO BE ATTACHED]

# **PHASE I ENVIRONMENTAL SITE ASSESSMENT**

**56-452 and 56-668 Kamehameha Highway  
Kahuku, Hawaii 96731  
TMK: (2) 5-6-006-018 and 5-6-008-006**

**Prepared for:**

**Champlin Hawaii Wind Holdings  
2020 Alameda Padre Serra, Suite 123  
Santa Barbara, California 93103**

**Prepared by:**



**TETRA TECH**

**Tetra Tech, Inc.  
737 Bishop Street, Suite 2340  
Honolulu, Hawaii 96813**

**Project No. 103IP3213**

**May 20, 2014**

**EXHIBIT D**

## CONTENTS

<b><u>Section</u></b>	<b><u>Page</u></b>
EXECUTIVE SUMMARY .....	iii
1.0 INTRODUCTION .....	1
1.1 OBJECTIVE .....	1
1.2 SCOPE OF WORK .....	2
1.3 LIMITATIONS AND EXCEPTIONS OF ASSESSMENT .....	3
1.4 SPECIAL TERMS AND CONDITIONS .....	3
1.5 RELIANCE .....	4
1.6 ENVIRONMENTAL LIENS .....	4
1.7 ACTIVITY AND USE LIMITATIONS .....	4
2.0 PROPERTY DESCRIPTION AND HISTORY .....	5
2.1 LOCATION AND LEGAL DESCRIPTION .....	5
2.2 PROPERTY AND VICINITY CHARACTERISTICS .....	5
2.4 INFORMATION SUBMITTED BY PROPERTY OWNER/OPERATOR .....	10
2.5 CURRENT USES OF PROPERTY .....	11
2.6 PAST USES OF THE PROPERTY .....	11
2.7 CURRENT AND PAST USES OF ADJOINING PROPERTIES .....	13
2.8 REVIEW OF PREVIOUS REPORTS .....	15
3.0 PHYSIOGRAPHY, GEOLOGY, AND HYDROGEOLOGY .....	16
3.1 PHYSIOGRAPHY .....	16
3.2 GEOLOGY .....	16
3.3 HYDROGEOLOGY .....	16
4.0 SITE RECONNAISSANCE AND INTERVIEWS .....	18
4.1 INDICATIONS OF HAZARDOUS WASTES/SUBSTANCES/MATERIALS .....	18
4.2 INDICATIONS OF SOLID WASTE/NON-HAZARDOUS SUBSTANCES .....	18
4.3 ABOVEGROUND OR UNDERGROUND STORAGE TANKS .....	18
4.4 INDICATIONS OF POLYCHLORINATED BIPHENYLS .....	19
4.5 WASTEWATER AND DRINKING WATER .....	19
4.6 HERBICIDE AND PESTICIDE USE .....	19
4.7 ASBESTOS .....	20
4.8 LEAD-BASED PAINT (LBP) .....	20
4.10 REGULATED WETLANDS .....	21
4.11 INDOOR MOLD .....	21
5.0 STANDARD ENVIRONMENTAL RECORDS .....	22
5.1 VAPOR ENCROACHMENT SCREEN .....	26
7.0 SIGNATURE OF ENVIRONMENTAL PROFESSIONALS .....	30

<b><u>FIGURES</u></b>	<b><u>Page</u></b>
1 SITE LOCATION MAP .....	7
2 SITE LAYOUT MAP .....	8

3      AERIAL PHOTOGRAPH ..... 9

<u>TABLES</u>	<u>Page</u>
1      REGULATORY DATABASE INFORMATION .....	23
2      STANDARD GUIDE FOR VAPOR ENCROACHMENT SCREENING .....	26

APPENDICES

A      SITE PHOTOGRAPH LOG

B      PERSONS INTERVIEWED AND CONTACTED FOR ESA

C      QUESTIONNAIRE FOR PHASE I ESA

D      INFORMATION REVIEWED FOR ESA

E      HISTORICAL RESOURCES REVIEWED

F      EDR RADIUS MAP WITH GEOCHECK® REPORT

G      EDR VEC REPORT



**EXECUTIVE SUMMARY**

Tetra Tech, Inc. (Tetra Tech) performed a Phase I Environmental Site Assessment (ESA) of two parcels located at 56-452 and 56-668 Kamehameha Highway in Kahuku, Hawaii, on behalf of Champlin Hawaii Wind Holdings. These two parcels are located east of the existing Kahuku Wind Farm. According to the City and County of Honolulu (C&CH) Department of Planning & Permitting (DPP) property record card, the Subject Property is denoted by Tax Map Key (TMK) (2) 5-6-006-018 [comprising 453 acres] and (2) 5-6-008-006 [comprising 232 acres]. TMK 5-6-006-018 is owned by Malaekahana Hui West, LLC [Malaekahana], and TMK 5-6-008-006 is owned by the State of Hawaii Department of Lands and Natural Resources [DLNR].

Tetra Tech performed an inspection of both parcels comprising the Subject Property on March 12 and 18, 2014 and April 3, 2014. The larger parcel is comprised predominantly of agricultural land with interspersed wooded areas, whereas the smaller parcel is vacant wooded and scrub-vegetated land, with no evidence of past or current agricultural use. Both parcels are irregular in shape, with dirt access roads observed to be traversing both parcels.

The Subject Property is bounded by undeveloped or agricultural and wooded land to the south, west, and northwest, residential and commercial properties to the north and northeast, and undeveloped or agricultural land and Kamehameha Highway to the east with residential and commercial properties beyond.

The following features were observed on the Malaekahana-owned 453-acre ("larger") parcel: two 800 square-foot (sf) rectangular office trailers on wooden platforms; a 1,400 sf greenhouse and associated irrigation equipment; a 700 sf water pump house with a 1,000-gallon water aboveground storage tank (AST); an elevated platform to be used as part of a zip line course; a meteorological tower; a 4,510 sf warehouse building; several single-family home residences; storage sheds for agricultural equipment; greenhouses; and, shanty-type dwellings.

The only features observed on the 232-acre ("smaller") parcel were a former concrete World War II vintage military bunker and two meteorological towers.

Based on review of information obtained from the site visit, interviews with persons familiar with the property, historic reports for the Subject Property, and review of historical aerial photographs and topographic maps, portions of the larger parcel of the Subject Property have been used for agricultural purposes since at least 1930. The smaller parcel has historically been undeveloped vacant scrub-vegetated land.

Based on a review of historic aerial photographs, topographic maps, and interviews with persons familiar with the Subject Property, the buildings observed at the Subject Property were constructed in 1975, or later. The exterior of the Subject Property buildings are constructed of wood, masonry, metal, plastic, and glass. Due to access limitations, the interior of the buildings at the Subject Property were not

assessed. No heating, ventilation, and air conditioning (HVAC) units were observed in association with the buildings at the Subject Property.

According to the C&CH DPP, numerous building permits were issued for the Subject Property between 1992 and 2013. The permits relate to the construction of the following: several agricultural storage sheds in 2000; a pump house in 2006; the construction of a greenhouse in 2007; installation of a temporary electrical connection for an office trailer in 2009; a metrological tower in 2013; updates to tenant spaces; and, agricultural equipment improvements. In addition, a permit listing indicates that a 4,510 sf warehouse building was constructed in 1975, and a 264 sf concrete boat dock was constructed in 1932. No other building department or zoning records are associated with the Subject Property.

As previously discussed, the larger parcel of the Subject Property has historically been used predominantly for agricultural purposes, and during the site reconnaissance signage was observed across the property indicating the use of pesticides. However, the normal use and application of agricultural chemicals generally does not trigger enforcement actions, assessments by regulatory agencies, or the recommendation for the further assessment of the Property unless there is evidence that indicates that misuse, dumping, or improper storage of chemicals is present or has occurred, or if the property is planned for residential redevelopment. There are no indications of the presence of on-site agricultural chemical mixing areas (current or former) or that chemical dumping or improper storage has occurred. Accordingly, Tetra Tech does not consider the historical use of the Property as agricultural land as an environmental condition that warrants further assessment.

During site reconnaissance, no evidence of underground storage tanks (USTs) was observed. There are also no records of historic USTs at the Subject Property. Therefore, historic USTs do not represent a concern to the Subject Property.

During site reconnaissance, a total of four pole-mounted transformers (three on one pole and one on another pole) were observed on the northeastern portion of the Subject Property. In addition, one pole-mounted transformer was observed adjacent to the northern corner of the Subject Property, and one pole-mounted transformer was observed along the eastern boundary of the Subject Property. The transformers are owned and maintained by the Hawaiian Electric Company, Inc., and were not labeled with respect to polychlorinated biphenyl (PCB) content. Evidence of leaks or spills was not observed in association with the transformer; therefore, the transformers are not considered a *recognized environmental condition (REC)*.

Heavy construction equipment, which may contain hydraulic components, was observed in a construction area along a dirt road on the eastern portion of the Subject Property. There was no evidence or leaks or spills observed in association with the heavy construction equipment; therefore, the heavy construction equipment does not represent a concern to the Subject Property.

Based on the dates of construction of the Subject Property buildings, asbestos containing materials

(ACM) is considered an American Society for Testing and Materials (ASTM) non-scope concern.

Lead-based paints (LBP) were mainly used prior to 1980, when use began to decline in the United States. Tetra Tech was unable to access the interior of the Subject Property buildings due to access limitations; however, Tetra Tech did not observe peeling paint or water damage on the exterior painted surfaces during site reconnaissance. Based on the dates of construction of the Subject Property buildings, LBP may potentially be present; however, LBP is considered an ASTM non-scope concern.

Based on the site assessment and review of regulatory and historic records, Tetra Tech identified that portions of the Subject Property are located in a 100-year floodplain. No other physical conditions of concern (i.e. wetlands) were observed on the Subject Property.

- Following is a summary of the findings associated with the Subject Property:
  - Tetra Tech did not identify *RECs* or *controlled recognized environmental conditions (CRECs)* in association with the Subject Property.
  - The Environmental Data Resources, Inc. (EDR) database report indicated that Subject Property was not listed in any of the databases searched by EDR.
  - The C&CH Police and Fire Stations in Kahuku, located adjacent to the northernmost corner of the Subject Property, were identified in the regulatory agency databases searched by EDR. However, based on the regulatory status and assumed groundwater flow direction, the facilities are not considered *RECs*.

Further, based on distance, assumed groundwater flow direction, and regulatory status with respect to the Subject Property, it is Tetra Tech's opinion that none of the regulatory-listed sites in the EDR report represent *RECs*.

- Tetra Tech identified the following ASTM non-scope concerns associated with the Subject Property:
  - Based on the dates of construction of the Subject Property buildings, ACM is considered an ASTM non-scope concern. In the event that Champlin Hawaii Wind Holdings plans any significant demolition or renovation activities, an ACM survey should be completed at the Subject Property.
  - Based on the dates of construction of the Subject Property buildings, LBP may potentially be present, and LBP is considered an ASTM non-scope concern. Laboratory testing would be required to definitely determine the presence of LBP in construction materials at the Subject Property. In the event that Champlin Hawaii Wind Holdings plans any significant demolition or renovation activities, an LBP survey should be completed at the Subject Property.

EXHIBIT "E"

CUP APPLICATION

[TO BE ATTACHED]

**CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF PLANNING & PERMITTING**  
850 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawaii 96813

**LAND USE PERMITS DIVISION MASTER APPLICATION FORM**

Additional data, drawings/plans, and fee requirements are listed on a separate sheet titled "Instructions for Filing." **PLEASE ASK FOR THESE INSTRUCTIONS.**

All specified materials described in the "Instructions for Filing" and required fees must accompany this form; incomplete applications will delay processing. You are encouraged to consult with Zoning Division staff in completing the application. Please call the appropriate phone number given in the "Instructions for Filing."

Please print legibly or type the required information.

SUBMITTED FEE: \$600.00

**PERMIT/APPROVAL REQUESTED (Check one or more as appropriate):**

<p><b>Cluster:</b> <input type="checkbox"/> Agricultural <input type="checkbox"/> Country <input type="checkbox"/> Housing</p> <p><b>Conditional Use Permit:</b> <input checked="" type="checkbox"/> Minor      <input type="checkbox"/> Major</p> <p><input type="checkbox"/> Existing Use: _____ (Indicate Type of Use)</p> <p><b>Environmental Document:</b> <input type="checkbox"/> Environmental Impact Statement <input type="checkbox"/> Environmental Assessment <input type="checkbox"/> Supplemental  <input type="checkbox"/> Minor Shoreline Structure</p>	<p><input type="checkbox"/> Modify Approved Permit: _____ (Indicate Reference File No.)</p> <p><input type="checkbox"/> Plan Review Use</p> <p><b>Planned Development:</b> <input type="checkbox"/> Housing <input type="checkbox"/> Commercial (WSD Only) <input type="checkbox"/> Resort (WSD Only) <input type="checkbox"/> Interim Transit (IPD-T)</p> <p><input type="checkbox"/> Shoreline Setback Variance</p> <p><b>Special District Permit:</b> <input type="checkbox"/> Minor      <input type="checkbox"/> Major _____ (Indicate District)</p> <p><input type="checkbox"/> Downtown Height &gt;350 Feet</p>	<p><b>Special Management Area Use Permit:</b> <input type="checkbox"/> Minor      <input type="checkbox"/> Major</p> <p><input type="checkbox"/> Temporary Use Approval</p> <p><input type="checkbox"/> Variance from LUO Section(s): _____</p> <p><input type="checkbox"/> Waiver from LUO Section(s): _____</p> <p><input type="checkbox"/> Zoning Adjustment, LUO Section(s): _____</p> <p><input type="checkbox"/> HRS Section 201H-38 Project</p>
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TAX MAP KEY(S): (1) 5-6-008:006

LOT AREA: 234 acres

ZONING DISTRICT(S): AG-1; AG-2

STATE LAND USE DISTRICT: Agricultural

STREET ADDRESS/LOCATION OF PROPERTY:

Parcel 006: 56-668 Kamehameha Highway

**RECORDED FEE OWNER:**

Name (& title, if any) Suzanne Case, Chairperson BLNR

Mailing Address 1151 Punchbowl Street

Honolulu, Hawaii 96813

Phone Number 808-587-0422

Signature \_\_\_\_\_

**PRESENT USE(S) OF PROPERTY/BUILDING:**

Fallow lands

**PROJECT NAME (if any):** Na Pua Makani Wind Project -

Subproject A

**APPLICANT:**

Name Mike Cutbirth, Na Pua Makani Power Part

Mailing Address P.O. Box 540

Santa Barbara, California 93102

Phone Number (805) 568-0300

Signature \_\_\_\_\_

**AUTHORIZED AGENT/CONTACT PERSON:**

Name Neal Dixon, Tetra Tech, Inc.

Mailing Address 737 Bishop Street, Suite 2340

Honolulu, Hawaii 96813

Phone Number (808) 441-6608

Signature \_\_\_\_\_

**REQUEST/PROPOSAL (Briefly describe the nature of the request, proposed activity or project):** Na Pua Makani Power Partners proposes to  
to construct and operate the Na Pua Makani Wind Project, a wind farm with a nameplate generating capacity of up to  
approximately 25 MW, located near the town of Kahuku, Oahu, Hawaii. The wind farm would include up to 9 wind turbine  
generators, access roads, assembly lay down areas, overhead and underground transmission and collector lines, an  
operations and maintenance building, and an electrical substation. The substation will be owned and operated in part by  
the applicant and in part by Hawaiian Electric Company. This CUPm application covers the portions of the project on

TMK (1) 5-6-008: 006, designated as Project A, and includes in its scope 5 turbines, lay down areas, access roads, and  
underground collector lines.

POSSE JOB NO. \_\_\_\_\_

REV. 2/17/2018

**EXHIBIT E**

EXHIBIT "F"

INDEMNITY LETTER

[TO BE ATTACHED]

**NA PUA MAKANI POWER PARTNERS, LLC**

PO Box 540  
Santa Barbara, CA 93012

\_\_\_\_\_, 201\_\_

Ms. Suzanne Case, Chairperson  
**Department of Land and Natural Resources**  
P.O. Box 621  
Honolulu, Hawaii 96809

Re: General Lease No. [No.], *Na Pua Makani Power Partners, LLC*, Lessee  
CUP Minor – Na Pua Makani Wind Energy Project

Dear Ms. Case:

The General Lease referenced above requires the Lessee to obtain a CUP from the City and County of Honolulu as a special condition of the lease. The enclosed City and County of Honolulu Master Application form for Conditional Use Permit ("CUP") Application requires the State of Hawaii to sign as the landowner as a condition of the County processing the request for a CUP(m). Please sign in the appropriate space in the application as the landowner.

I/We agree to assume and be responsible and liable for all of the duties and obligations of the landowner under the application and shall indemnify, hold harmless, and defend the State of Hawaii from and against all claims, injuries and damages arising out of those duties and obligations. I/We understand and agree that by signing that application as requested, the State of Hawaii does not waive or release any of its rights and privileges, and expressly reserves all such rights and privileges under the General Lease referenced above.

Sincerely,

NA PUA MAKANI POWER PARTNERS, LLC

By: \_\_\_\_\_  
Michael Cutbirth, Manager